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Insist that Big Tobacco pay up

Editorials

State attorneys general - including Ohio's Jim Petro and Kentucky's Gregory Stumbo - are back suing big tobacco companies. The provocation, this time, is that No. 2 cigarette maker R.J. Reynolds and No. 3 Lorillard withheld about $755 million from this year's payments owed nationwide under the 1998 Master Settlement Agreement. Since 1998, the companies have paid out more than $47 billion.

Reynolds, Lorillard and others claim they qualify for reduced payments because of lost market share. The attorneys general insist the states are entitled to full payment under the settlement. Ohio, Kentucky, California, Massachusetts and other states should vigorously pursue full payment and take other preventive action to keep smoking-related health-care costs from choking state budgets. Smoking-related Medicaid costs already play havoc with Ohio and Kentucky budgets, and the tobacco payments, although worth billions, cannot fully offset states' future health care costs, unless they cut tobacco use.

Terms of the 1998 settlement did allow for reduced payments, if it were shown that new controls put on the major tobacco companies caused them to lose market share to smaller companies not burdened by the original deal. This March, an economic consulting firm (the Battle Group) brought in by the big companies reported that "more likely than not" the settlement agreement contributed significantly to their market share dropping to about 92 percent.

But other terms of the agreement required the states to enact statutes obligating other cigarette makers to pay into escrow accounts to cover future claims the states may win for smoking-related costs from those companies' tobacco products. The settlement clearly says the major tobacco companies are not entitled to reduced payments if the states have passed such a statute and are "diligently enforcing" it.

Petro, Stumbo and the other attorneys general say they are.

Tens of millions of dollars are at stake. Reynolds and Lorillard have withheld about $38 million of their $312 million owed Ohio this year. Philip Morris paid its full $174 million to Ohio, but argues it too deserves reduced payments. Ohio is the fourth-largest recipient of settlement proceeds. Petro admits the majors have lost market share, but as long as Ohio is enforcing its statute, it deserves full payment. He's no fan of the complex tobacco agreement. "It would have been so much easier just to add a 46-cents-a-pack tax," he told The Enquirer Editorial Board.

Kentucky received more than $100 million in tobacco payments this April. In January, Gov. Ernie Fletcher argued Kentucky got shortchanged on its share of MSA dollars and proposed to replace it with a flat $4-a-carton "assessment" on all cigarette sales in the state. His plan got lost in the stampede of lawmakers running from any "new" tobacco taxes. But one thing Fletcher and Stumbo would agree on is that Kentucky has been diligently enforcing its settlement statute.

That will be the chief question before the courts. If they are, tobacco makers should pay up.

